

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2286 OF 2014

Avinash @ Gobya Pawar	... Applicant
Vs.	
The State of Maharashtra	... Respondent

BAIL APPLICATION NO. 281 OF 2015

Suresh Shankar Dhotre	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr. Satyavrat Joshi, Advocate for the Applicants in both the matters.
Mr. Arfan Sait, APP for Respondent – State
I.O. MR. Dhanaraj G. Walunjkar, ACP, Pune City Police Station.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **JUNE 8, 2015**

P.C.:

These two Bail Applications are made by the accused who are involved in the same offence which is registered at C.R. No. 356 of 2013 for the offences punishable under sections 395, 307, 326, 143, 145, 147, 148, 149, 323, 427 of the Indian Penal Code, under section 142 of the Bombay Police Act and under section 3(1)(ii)(2)(4) of Maharashtra Control of Organized Crimes Act, 1999. One Laxman Manikchand Unecha has given the information about the offence to Chaturshringi Police Station, Pune that the incident of assault, robbery and damaging the property has taken place on 23rd October, 2013 at midnight. The incident is in fact of two parts. The applicants/accused and co-accused on the same night

intervening 22nd October and 23rd October, 2013 went to the house of the eye witness Renuka Sunny Khetawat at Vadarwadi, Pune. They asked for her husband and brother-in-law. However, they were not there, so the accused persons assaulted the lady and took away Rs.3,000/- and then they came out of the house of the informant and started shouting loudly and damaged the cars which were parked outside. When the informant resisted them from doing so, they assaulted him with deadly weapon. The applicant/accused Avinash alias Gobya Pawar is accused no. 1 and applicant/accused Suresh Dhotre is accused no. 8 in MCOC Case No. 3 of 2014 which is pending before the Special Court of MCOC, Pune and the charge sheet is filed against all the accused on 15th April, 2014. The applicants/accused are in prison. Hence, these Bail Applications.

2. The learned counsel for the applicants/accused has submitted that there is no case against the applicants/accused. The applicants are innocent. They have not committed any offence much less the offence under MCOC Act. The learned counsel submitted that the complainant did not take names of these applicants/accused, he did not know them and also did not identify the applicants/accused in the Test Identification parade. The learned counsel submitted that other witness Renuka Khetawat did not identify Suresh. He submitted that Suria Dhotre is not Suresh Dhotre but he is a different person. The learned counsel pointed

out that in the Test Identification Parade, Renuka Khetawat identified only Avinash but she did not identify Suresh Dhotre. He pointed out that though in her statement she has given specific role of one Suria, she did not identify Suresh as the same person and therefore, his submission that Suresh is not Surya is fortified. The learned counsel further made legal submissions on the point of invoking MCOCA considering scanty evidence against the applicants/accused in respect of continuing unlawful activity and organized crime as defined under section 3 and 2 of the MCOC Act. He submitted that unless the prosecution shows that the applicants/accused have committed offence of organized crime, MCOCA cannot be invoked and they are entitled to bail. In support of his submission, he relied on the judgment of Hon'ble Supreme Court in the case of **Mahipal Singh vs. C.B.I. & Anr., reported in 2014 AIR (SC) 2660.**

3. Learned APP opposed the Applications. He submitted that the applicants/accused are members of the gang which is led by one Jangam. He submitted that accused Suresh Dhotre is known in the said vicinity as Suria Dhotre, hence Suresh and Suria is one person. The learned APP fairly conceded that in the Test Identification Parade witness Mrs. Renuka Kethawat did not identify Suresh but she has taken his name as he had entered her house and kicked on her stomach. She also took the name of

Avinash in her statement. Learned APP further submitted that Renuka Khetawat is the resident of same vicinity of Vadarwadi and she knew accused persons and co-accused by name and face. He submitted that it appears that Renuka Khetawat avoided to identify the applicants/accused out of their terror. In support of his submissions, he relied on the criminal record of these accused. He pointed out that there are 7 offences including the present offence pending against accused Avinash alias Gobya Pawar and in all 24 offences were registered against accused Suresh Dhotre. Learned APP further submitted that out of these 24 cases, applicant/accused Suresh was convicted in two cases, which are of the nature of theft and assault. He submitted that against applicant Suresh, the Commissioner of Police has issued order of externment which are in force when he entered and committed offence and, therefore, a report was made and other cases registered against him. He submitted that the police after investigation found that these two persons are the members of organized crime and Jangum gang. Section 4 under MCOC Act is also invoked in the charge sheet. He further argued that under section 21(4) of MCOC Act, there is a bar to release the accused on bail unless there is a reasonable ground to hold that applicants are not guilty of alleged offence and they are not likely to commit offence if released on bail. In support of his submissions, he relied on the judgment of Hon'ble Supreme Court in the case of **State of Maharashtra vs. Vishwanath Maranna Shetty**,

reported in 2013 Cri. L.J. 205.

4. Perused the FIR, statements of Renuka Khetawat and also of other witnesses. It is clear from the statements that the offence has taken place and it is in two parts in the same transaction. Eye witness Renuka Khetawat was assaulted by the applicant/accused Suresh Dhotre. She has attributed a specific role that Suresh Dhotre has kicked on her stomach. She has also mentioned the name of Avinash @ Gobya Pawar. It is true that the complainant did not take the names of both the applicants/accused, however, he told that group of 7 to 8 persons have damaged the car and vehicles and two of them were Komade and Somya. Renuka Khetawat has confirmed the presence of these two persons in the group of assailants. She did not identify accused Suresh but only identified Avinash though Suresh had kicked her. Routinely, prima facie a question mark can be put to such evidence, however, as rightly pointed out by learned APP that considering the criminal record and the terror of Suresh @ Suria Dhotre, she might have refused to identify him at the time of Test identification parade. Inability to identify and refusal to identify are two different things which can be explained at the time of trial.

5. In the case of **Mahipal Singh vs. C.B.I. & Anr.(supra)**, the Hon'ble Supreme Court has dealt with proof of ingredients of organized crime and

continuing unlawful activity and in the said case, the Hon'ble Lordships have rightly held that submission of charge sheets in more than one case and taking cognizance of such number of cases are the ingredients of the offence and have to be satisfied on the date of crime and thus, ingredients were not satisfied in the case of **Mahipal Singh** and so, Hon'ble Supreme Court held that accused could not be prosecuted for the offence under section 3 of MCOCA. In the present case, *prima facie* it is not so. Moreover, the case in hand is not a final hearing but it is a Bail Application under the Act, therefore, section 21(4) is attracted. Both the applicants/accused have very bad criminal records. Considering this, this Court is not satisfied that they are not likely to commit offence if they are released on bail. So also, it cannot be said that there is reasonable ground to hold that applicants are not guilty of alleged offence. In support of this, I place reliance on the judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra vs. Vishwanath Maranna Shetty** (*supra*). Hence, it is not a fit case to grant bail. Both the Bail Applications are rejected.

(MRS.MRIDULA BHATKAR, J.)